

U.S. Serial No.: 09/811,248
Reply dated August 23, 2007

AUG 23 2007

REMARKS

The Communication dated July 25, 2007 stated in material part: "Applicants' response to the current grounds of rejection over the prior art is non-responsive because no support for the invention now claimed is shown in the instant applications' originally filed supporting disclosure."

The present application is a divisional of 08/855,499 (now U.S. Patent 6,271,278), which is a CIP of 08/416,269 (now U.S. Patent 5,750,585). Patent '278 is the subject of reissue application 10/807,227, filed March 22, 2004.

In response, Applicants wish to call the examiner's attention to 37 CFR §1.57(a). In particular, whenever (i) all or a portion of the specification is inadvertently omitted from an application, but (ii) the application contains a claim under 37 CFR §1.78 for the benefit of a prior-filed nonprovisional application, that was (iii) present on the filing date of the application, and (iv) the inadvertently omitted portion of the specification is completely contained in the prior-filed application, the claim under §1.78 shall also be considered an incorporation by reference of the prior-filed application as to the inadvertently omitted portion of the specification. In short, the inadvertently omitted portions of an earlier-filed specification are incorporated by reference into the later

U.S. Serial No.: 09/811,248
Reply dated August 23, 2007

application by operation of law upon properly making a claim of priority. Each of the above elements is addressed below.

With respect to those portions of the claimed subject matter that were inadvertently omitted in the originally filed specification, the inadvertent nature of those omissions has been fully discussed in the corresponding reissue application, which the examiner is urged to consult. Suffice it to say that the present application was prepared by a different law firm than the firm that prepared the prior-filed application, without knowledge or possession of the prior application. Consequently, the pertinent disclosures of the prior application were "inadvertently" omitted from this CIP application.

With respect to (ii) and (iii), the present application contains a claim to the prior-filed application by virtue of the present application being a divisional of patent '278, for which reissue is sought. The benefit claim was made in the reissue application upon filing, which should be imputed to the present divisional application. Moreover, the filing receipt in the present application states that it is a divisional of patent '278, which is a CIP of patent '585.

With respect to (iv), the entirety of the claimed subject matter is "contained" within the prior-filed application. In particular, the language of claims 56, 57, 61, 63 and 74 appears

U.S. Serial No.: 09/811,248
Reply dated August 23, 2007

in patent '585 at the points indicated in the Amendment dated April 30, 2007. The language of claims 58-60 appears in patent '585 at the points indicated in the Amendment dated April 30, 2007, which includes subject matter appearing in incorporated U.S. Patent No. 4,178,361. Applicants respectfully submit that the claimed subject matter is, therefore, "completely contained" in the prior-filed application.

Applicants note that the effective date of 37 CFR §1.57 is October 21, 2004 and the filing date of the reissue application is March 22, 2004. However, Applicants' position is that the promulgation of 37 CFR §1.57 merely codified pre-existing Office practice per the incorporation by reference of omitted matter, and did not accord Applicants a "new" substantive right.

In the event that the Examiner concurs with the foregoing analysis of the facts and law, the Examiner is urged to instruct Applicants to amend the instant application to include the inadvertently omitted portions of the specification prior to the close of prosecution. 37 CFR §1.57(a)(1).

Applicants' response to the rejections over the cited art appearing the Action mailed January 30, 2007 are presented in the Amendment filed April 30, 2007 and, therefore, are not reproduced herein.

U.S. Serial No.: 09/811,248
Reply dated August 23, 2007

If, in the opinion of the Examiner, a telephone conversation could expedite prosecution, the Examiner is invited to telephone the undersigned attorney at the number given below.

Respectfully submitted,



James H. Meadows, Ph.D.
Reg. No. 33,965

Correspondence Address:
Medicus Associates
2804 Kentucky Ave.
Joplin, MO 64804
Tel: (417) 781-9965
Fax: (417) 622-4457
Date: August 23, 2007

CERTIFICATION OF FACSIMILE TRANSMISSION

I, James H. Meadows, hereby certify that this paper is being facsimile transmitted to the U.S. Patent and Trademark Office on the date shown. Signature: James H. Meadows Date: 8/23/07